No. 242

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1951

WILEY H. CADDEL,
Petitioner,

v.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

STATEMENT OF THE CASE

Petitioner requests a writ of certiorari to the Supreme Court of the State of California to review the order of said court denying without opinion the petition of Wiley H. Caddel for a writ of error *coram nobis.*

Petitioner Wiley H. Caddel, together with William Griffin, James Mulligan, Fred Grange, Paul McCarty and Robert Gray, was indicted in Mendocino County, California, on five felony counts. Count One charged

conspiracy to violate Sections 67* and 68* of the California Penal Code, a conspiracy to give and offer bribes to executive officers of the State and also a conspiracy to ask for and agree to receive bribes as executive officers and employees of the State. Count Two charged a conspiracy to violate Section 330a* of the California Penal Code, namely, to have under their control as owners, agents, employees, or otherwise, slot machines upon the result of the action of which money was then and thereafter to be hazarded. Count Three charged all defendants with having given a bribe to Sheriff B. G. Broaddus on April 30, 1948; Count Four charged all defendants with having given a bribe to Sheriff Broaddus on June 3, 1948; and Count Five charged all six defendants with having given a bribe to Sheriff Broaddus' deputy, William White, on June 3, 1948.

Prior to trial, defendant Grange entered a plea of guilty to Count One of the indictment and on motion of the district attorney, Counts Two, Three, Four and Five were dismissed as against him. During the course of the trial and prior to the time the people rested their case, the court granted the motions of the district attorney to discharge defendants Gray and McCarty in order that each might be made a witness for the people, pursuant to Section 1099* of the California Penal Code. On December 3, 1948, the jury returned its verdicts finding defendants Griffin, Mulligan and Caddel guilty on each of the five counts of

* See Appendix, for California Penal Code sections.

the indictment. Motions for probation and for a new trial were denied. On appeal the judgment of the trial court and the order denying a new trial were affirmed. (*People* v. *Griffin,* 98 Cal. App. 2d 1; 219 Pac. 2d 519.) A petition for rehearing was filed and the decision of the District Court of Appeal of the State of California, in and for the Third Appellate District, modified in a minor respect (*People* v. *Griffin,* 98 Cal. App. 2d 1, 57; 219 Pac. 2d 519). A petition for a hearing by the California Supreme Court was denied without opinion on July 30, 1950 (*People* v. *Griffin,* 98 Cal. App. 2d 1, 57). No writ of certiorari was sought from this court to review the decision of the District Court of Appeal of the State of California, in and for the Third Appellate District.

On April 4, 1951, Wiley H. Caddel filed a petition for writ of error *coram nobis* with the District Court of Appeal of the State of California, in and for the Third Appellate District. This petition was denied by said court without opinion on April 19, 1951 (see Minutes of the District Court, 103 A. C. A., Vol. 4, p. 2) and a petition for hearing was denied by the California Supreme Court on May 17, 1951 (see Minutes of the Supreme Court, 37 A. C. Vol. 7, p. 2).

Thereafter petitioner filed his petition for writ of certiorari with this court.

JURISDICTIONAL STATEMENT

(1) The petition for writ of certiorari should have been directed to the District Court of Appeal of the

State of California, in and for the Third Appellate District, which was given jurisdiction to decide the matter pursuant to the provisions of Section 1265 * of the Penal Code of the State of California and not to the California Supreme Court which did not assume jurisdiction of said cause. The order of the District Court of Appeal, in and for the Third Appellate District, was the final judgment of the highest state court in this matter.

Parker v. *Los Angeles,* 338 U. S. 327, 70 S. Ct. 171, 94 L. Ed. 144, 146;
Wissner v. *Wissner,* 70 S. Ct. 398, 338 U. S. 655, 94 L. Ed. 424, 427.

(2) The instant petition for writ of certiorari does not comply with the rules of this court (Rule 38(2) and Rule 12, par. 1), insofar as no federal question of substantial importance has been presented to this court nor were such questions presented to the state court.

Williams v. *Kaiser,* 323 U. S. 471, 477, 65 S. Ct. 363, 89 L. Ed. 398;
Klinger v. *Missouri,* 13 Wall. 257, 20 L. Ed. 635;
Whitney v. *California,* 274 U. S. 357, 360-1, 47 S. Ct. 641, 71 L. Ed. 1095;
Lynch ex rel Pierson v. *New York,* 293 U. S. 52, 54, 55 S. Ct. 16, 79 L. Ed. 191.

Petitioner, on page 1 of his petition for certiorari states: "* * * a hearing is necessary to secure uniformity of decision in California to settle important questions of law." This is not a ground for interven-

* See Appendix, for California Penal Code sections.

tion by the federal courts in a state matter nor does it present a federal question of substantial importance.

Southwestern Bell Tel. Co. v. *Oklahoma*, 303 U. S. 206, 58 S. Ct. 528, 82 L. Ed. 751;

Honeyman v. *Hanan*, 300 U. S. 14, 18, 57 S. Ct. 350, 81 L. Ed. 476.

STATEMENT OF FACTS

The sole record before this court is the petition for a hearing filed with the California Supreme Court after the denial of the petition for writ of error *coram nobis* by the District Court of Appeal of the State of California, in and for the Third Appellate District, and the answer to said petition filed by the respondent with the California Supreme Court. (Tr.† 1-25.)

The petition sets forth two affidavits containing evidence which it is alleged did not come into the possession of the petitioner until after the decision in his original matter had been affirmed on appeal. The contents of the affidavit of Paul McCarty are to the effect that prior to the indictment in the case of *People* v. *Griffin, et al.*, he had been requested by the sheriff of Mendocino County to ascertain whether there was a conspiracy to attempt to place illegal slot machines in various resorts in Mendocino County; that as a result of this request he acted as an undercover agent for said sheriff and reported various conversations with respect to the alleged conspiracy to the sheriff; that he, the affiant, was subsequently in-

† Tr. refers to Transcript of Record.

dicted and when he questioned the district attorney and sheriff of said county as to this indictment was given assurances of dismissal for lack of sufficient evidence; that he was also given an assurance of dismissal by the attorney for the Crime Commission of the State of California (Tr. 3-4). The affidavit further states that the action was dismissed as to affiant McCarty upon motion of the prosecution which was granted by the trial court but only after the sheriff of Mendocino County had testified on behalf of the prosecution relative to certain conversations with McCarty regarding the identification of one of the defendants; that affiant McCarty in his testimony at the trial contradicted this conversation between the sheriff and himself but at the time of the sheriff's testimony, the affiant was still a defendant in the case; that the affiant failed to tell anyone of the promises and representations made to him until November 10, 1950, when he disclosed this matter to one of petitioner's then attorneys (Tr. 4-5).

The affidavit of Joseph Ball, petitioner's attorney at the time of the original trial and appeal, was to the effect that the facts related in McCarty's affidavit were unknown to him prior to, during, or subsequent to the trial and prior to their disclosure to petitioner's then attorney on November 10, 1950, although he exercised all conceivable methods of ascertaining facts pertinent to Caddel's defense (Tr. 7).

The petition then contains the allegations that as a result of these facts petitioner was denied a fair

trial for the testimony of Sheriff Broaddus as to conversations had with affiant McCarty would have been incompetent if McCarty had not been a defendant and without this testimony petitioner would not have been convicted and further that after all defendants had accepted a jury, defendant McCarty exercised a peremptory challenge, thereby causing a different jury to be selected from the one accepted by petitioner Caddel (Tr. 6).

The answer to the petition filed by the respondent People raised the points that the facts as alleged in the petition did not bring the matter within the scope of a writ of *coram nobis* as delineated by the California courts and that the points presented were fully covered in the decision of the district court of appeal in *People* v. *Griffin,* 98 Cal. App. 2d 1; 219 Pac. 2d 519).

SUMMARY OF ARGUMENT

I. The Petition for Writ of Certiorari Is Not Directed to the Proper State Court Nor Does It Seek to Review a Final Judgment of a State Court.

II. A Writ of Certiorari Does Not Lie in the Instant Matter as the Decisions of the State Courts Were Based on Adequate Nonfederal Grounds and No Federal Question of Substantial Importance is Presented to this Court.

III. The Petition for Writ of Error *Coram Nobis* Filed in the State Court Did Not Present a Cause of Action for the Issuance of Said Writ.

ARGUMENT

I. The Petition for Writ of Certiorari Is Not Directed to the Proper State Court Nor Does It Seek to Review a Final Judgment of a State Court.

Petitioner filed his petition for writ of error *coram nobis* with the District Court of Appeal of the State of California, in and for the Third Appellate District (Tr. 1). This was the court that affirmed the judgment on appeal from the original conviction (*People* v. *Griffin*, 98 Cal. App. 2d 1; 219 Pac. 2d 519). Under the provisions of Section 1265 of the California Penal Code, any petition for writ of error *coram nobis* brought after a judgment has been affirmed on appeal and a hearing *not* granted by the California Supreme Court (which is the situation in this case, *People* v. *Griffin*, 98 Cal. App. 2d 1, 57; 219 Pac. 2d 219), must be made to the district court of appeal which affirmed the judgment on appeal.

In this matter the district court of appeal denied the petition for writ of error *coram nobis* (Tr. 1), and a petition for hearing was filed in the California Supreme Court. This review is discretionary with the California Supreme Court (Calif. Const., Art. VI, Sec. 4(b)). Where, as here, the California Supreme Court refused to exercise its discretionary power of review, the judgment of the District Court of Appeal, in and for the Third Appellate District, became final and was that of the highest state court. This is the final judgment which petitioner should have sought to review as the judgment of the highest state court,

instead he is seeking a review of the State Supreme Court's action in refusing to exercise its discretionary power.

Parker v. *Los Angeles,* 338 U. S. 327, 70 S. Ct. 171, 94 L. Ed. 144, 146;

Wissner v. *Wissner,* 338 U. S. 655, 70 S. Ct. 398, 94 L. Ed. 424, 427;

Robertson and Kirkham, Juris. of the Supreme Court of the United States by Wolfson & Kneeland (1951) pp. 90-91, Sec. 52;

Title 28, U. S. Code, Sec. 1257.

II. A Writ of Certiorari Does Not Lie in the Instant Matter as the Decisions of the State Courts Were Based on Adequate Nonfederal Grounds and No Federal Question of Substantial Importance Is Presented to This Court.

As appears from the record in this matter no federal question was sought to be raised in the trial of this matter, the appeal, or the *coram nobis* proceeding (Tr. 1-13; *People* v. *Griffin, et al.,* 98 Cal. App. 2d 1; 219 Pac. 2d 519).

It is a well-settled principle of law that before this court will review a decision of a state court, it must affirmatively appear from the record that the federal question was presented to the highest court of the state having jurisdiction, and that its decision of the federal question was necessary to its determination of the cause (*Honeyman* v. *Hanan,* 300 U. S. 14, 18; 57 S. Ct. 350; 81 L. Ed. 476; *Lynch* v. *New York,* 293 U. S. 52; 55 S. Ct. 16; 79 L. Ed. 191; *Williams* v. *Kaiser,* 323 U. S. 471, 477; 65 S. Ct. 363; 89 L. Ed. 398).

Under California law a writ of error *coram nobis* is a remedy of narrow scope. The California Supreme Court in the case of *People* v. *Adamson*, 34 Cal. 2d 320, 210 Pac. 2d 13, (cert. denied, 338 U. S. 897), has delineated the scope of the writ in this State in the following language: (34 Cal. 2d 320, 326-7, 330.)

> "In this state a motion to vacate a judgment in the nature of a petition for *coram nobis* is a remedy of narrow scope. (See *People* v. *Darcy* (1947), 79 Cal. App. 2d 683, 693 (180 P. 2d 752); *People* v. *Martinez* (1948), 88 Cal. App. 2d 767, 774 (199 P. 2d 375).) Its purpose is to secure relief, where no other remedy exists, from a judgment rendered while there existed some fact which would have prevented its rendition if the trial court had known it and which, through no negligence or fault of the defendant, was not then known to the court (*People* v. *Gilbert* (1944), 25 Cal. 2d 422, 442 (154 P. 2d 657); *In re Lindley* (1947) 29 Cal. 2d 709, 725-6 (177 P. 2d 918); *People* v. *Tuthill* (1948), 32 Cal. 2d 819, 821 (198 P. 2d 505).) The applicant for the writ 'must show that the facts upon which he relies were not known to him and could not in the exercise of due diligence have been discovered by him at any time substantially earlier than the time of his motion for the writ; otherwise he has stated no ground for relief.' (*People* v. *Shorts* (1948), 32 Cal. 2d 502, 513 (197 P. 2d 330).)
>
> "With the expansion of the function of habeas corpus in this state, an application for that writ has become the proper remedy to attack collaterally a judgment of conviction which has been obtained in violation of fundamental constitutional rights.

Thus, the appropriate writ to secure relief from a judgment of conviction obtained by the use of false testimony known by the prosecution to be false is not *coram nobis* but habeas corpus (*In re Lindley, supra,* p. 725 of 29 Cal. 2d; see *People* v. *Mooney* (1918), 178 Cal. 525 (174 P. 325); *Mooney* v. *Holohan* (1934) 294 U. S. 103, 113 (55 S. Ct. 340, 79 L. Ed. 791, 98 A. L. R. 406); *In re Mooney* (1937), 10 Cal. 2d 1 (73 P. 2d 554)), although *coram nobis* has been used for this purpose (see *People* v. *Kirk* (1946), 76 Cal. App. 2d 496, 498 (173 P. 2d 367)).

* * * * *

"'Where a defendant seeks to vacate a solemn judgment of conviction, particularly where such judgment has been affirmed on appeal, the showing of diligence essential to the granting of relief by way of *coram nobis* should be no less than the similar showing required in civil cases where relief is sought against lately discovered fraud. In such cases it is necessary to aver not only the probative facts upon which the basic claim rests, but also the time and circumstances under which the facts were discovered, in order that the court can determine as a matter of law whether the litigant proceeded with due diligence; a mere allegation of the ultimate facts, or of the legal conclusion of diligence, is insufficient.' (*People* v. *Shorts* (1948), *supra,* 32 Cal. 2d 502, 513.) * * *

"The proceeding designated '*coram nobis*' in this state is a court-made proceeding and, within the limits of the constitutional requirements pointed out in *People* v. *Shorts* (1948), *supra,* 32 Cal. 2d 502, 506, must, therefore, be subject to such limitations and procedural requirements as the creating

court may prescribe. Such proceeding is not subject to all the rules applicable to an original trial; it is an attack upon a judgment which has become final and in favor of which there are strong presumptions of regularity; the 'petition' is regarded as a motion to vacate the judgment; it is not a complaint nor does it initiate an independent action (*In re Paiva* (1948), 31 Cal. 2d 503, 509 (190 P. 2d 604)). * * *

"In the circumstances of the present case—a *coram nobis* attack upon a judgment which has become final after affirmance on appeal—we hold that this court, like the trial court, has 'every right and the plain duty to scrutinize (defendant's claims) with a critical eye, in the light of its familiarity with the facts of this crime as they had been adduced in (the trial).' (*Hysler* v. *Florida* (1941), 315 U. S. 411, 417 (62 S. Ct. 688, 86 L. Ed. 932).) This rule is the same whether the proceeding be before us on appeal or on direct application. (See Pen. Code, §1265.) The Hysler case concerns the Florida procedure whereby convicted defendants can, even after affirmance of the judgment on appeal, obtain relief of the sort sought here; i.e., 'the judicial correction of a wrong committed in the administration of criminal justice and resulting in the deprivation of life or liberty without due process' (p. 415 of 315 U. S.). 'The State's security in the just administration of its criminal law must largely rest upon the competence of its trial courts. But that does not bar the state Supreme Court from exercising the vigilance of a hardheaded consideration of appeals to it for upsetting a conviction' (p. 422 of 315 U. S.). And in giving such consideration we, like the trial court, are 'not bound to accept at

face value the allegations of the petition' (*Taylor* v. *Alabama* (1948), 335 U. S. 252, 262 (68 S. Ct. 1415, 92 L. Ed. 1935))."

To the same effect, see:

In re Sprague, 37 A. C. 112, 230 P. 2d 633;
People v. *Thompson,* 94 Cal. App. 2d 578, 211 P. 2d;
People v. *Bellew,* 100 Cal. App. 2d 761, 224 P. 2d 845;
People v. *Kirk,* 98 Cal. App. 2d 687, 220 P. 2d 976;
People v. *Hoffman,* 103 A. C. A. 380, 229 P. 2d 486;
People v. *Emery,* 99 Cal. App. 2d 173; 221 P. 2d 223;
People v. *Tuthill,* 32 Cal. 2d 819; 198 P. 2d 505.

Thus, where as in the instant case, the decision of the state court could have been on the ground that the allegations of the petition did not meet the requirements of the California case law as to the scope of *coram nobis*, that there was not due diligence shown in the matter, or that the denial of said petition by the District Court of Appeal of the State of California, in and for the Third Appellate District, did not create a conflict in decisions in the State of California or present an important question of public law justifying a hearing by the California Supreme Court, it is apparent the state grounds are sufficient to sustain the judgment and, therefore, this court should not undertake to review such action.

Klinger v. *Missouri,* 13 Wall. 257, 263, 20 L. Ed. 635;

Wood Mowing and Reaping Machine Co. v. *Skinner,* 139 U. S. 293, 297, 35 L. Ed. 193, 11 S. Ct. 528;

Allen v. *Arguimbau,* 198 U. S. 149, 154-5, 49 L. Ed. 990, 25 S. Ct. 622.

III. The Petition for Writ of Error Coram Nobis Filed in the State Court Did Not Present a Cause of Action for the Issuance of Said Writ.

Petitioner contended both in this court and in the state courts that the testimony of Sheriff Broaddus to the effect that affiant McCarty had told Broaddus that Caddel was to receive $4 per slot machine as a bribe to the office of the Attorney General, in return for which that office would not interfere with the illegal operation of slot machines in Mendocino County, was highly prejudicial and would have been inadmissible if McCarty had not been a defendant in the case; and that had not this testimony been related there would have been no testimony upon which petitioner could have been convicted. (Petition for Certiorari, p. 6.)

That such a contention was without merit and was previously presented to the District Court of Appeal on the appeal from the original judgment appears from the opinion in *People* v. *Griffin,* 98 Cal. App. 2d 1, 51-2; 219 P. 2d 519, wherein it is stated:

> "It is urged first that the district attorney was guilty of prejudicial misconduct in offering in evidence certain testimony of Sheriff Broaddus relating to a conversation with McCarty. The substance of this conversation was that McCarty had advised

the sheriff that on the same day that appellant Caddel had made the visit to the sheriff's office a man had also called upon McCarty. This man represented that he had been to see the sheriff, and then stated to McCarty that he (the man) wanted $4 per week per machine for the attorney general's office. When McCarty gave the sheriff this information the two then compared notes and developed a similarity in stature and dress between Caddel and the man. This testimony was admitted in evidence prior to the dismissal of the case as to McCarty and therefore while he was still a defendant. In relation to it the trial court instructed the jury as follows: 'Ladies and gentlemen of the jury, in order that there may be no misunderstanding about the situation and that you may be fully advised and informed, Mr. Broaddus, who is now a witness on the stand, has among other things testified to certain conversations had between him and defendant McCarty, and I instruct you now that the testimony concerning such conversations with McCarty are admitted only as against the defendant McCarty and are not to be considered by you as binding upon any other of the defendants.'

"At a subsequent time in the trial, and after the court had granted the prosecution's request for discharge as to McCarty, so that he might be made a witness for the People, the court, upon motion of the defendants, struck out of evidence the conversations between Sheriff Broaddus and McCarty, as follows: 'Well, the motion will be granted and all testimony given by the witness Sheriff Broaddus relative to all conversations between him and Paul McCarty will be stricken, and the jury is instructed

to disregard all the testimony that has by order of the court been stricken or which hereafter may be stricken.'

"When McCarty was sworn as a witness he was questioned upon direct examination, without objection, as to the identity of the man with whom he had the conversation, as reported to Sheriff Broaddus. McCarty testified definitely that 'the man' was not appellant Caddel.

"A review of these circumstances induces the conclusion that the evidence in the first instance was properly admissible as against defendant McCarty. The court so limited it by a proper instruction as to the jury, and then subsequently struck the testimony of the conversation from the record. Evidence was then adduced from the one person who would know, namely, McCarty, that 'the man' was not Caddel. We cannot perceive that prejudice resulted therefrom to appellant Caddel."

Since the evidence of which petitioner now complains, even when admitted was restricted solely to defendant McCarty and before the close of the case had been stricken from the record and the jury so admonished, it could not have been highly prejudicial to the petitioner Caddel. A review of the evidence adduced at the trial of this matter (*People* v. *Griffin*, 298 Cal. App. 2d 1; 219 P. 2d 519), and of which the state court could and did take cognizance (*Hysler* v. *Florida*, 315 U. S. 411, 417, 62 S. Ct. 688; 86 L. Ed. 932), disclosed that the evidence adduced from McCarty or from Sheriff Broaddus was not the sole evidence upon which petitioner Caddel was convicted.

The record on appeal in this matter was voluminous, the Reporter's Transcript alone containing 4,127 pages. There were 53 witnesses called and examined and over 100 exhibits admitted into evidence (*People* v. *Griffin*, 98 Cal. App. 2d 1, 9, 219 P. 2d 519).

The evidence was fully considered by the District Court of Appeal in its opinion affirming the original conviction and it found there was substantial evidence beyond mere association connecting Caddel with the conspiracies charged and that he was participant therein (*People* v. *Griffin*, 98 Cal. App. 2d 1, 9-22).

Further, the question of admissibility of evidence is one of state law and not a federal question (*Lisenba* v. *California*, 314 U. S. 219, 86 L. Ed. 166). Even if McCarty had been promised immunity by the prosecution prior to the trial of the instant matter, which respondent does not concede, this fact would not have prevented rendition of the judgment of the trial court. There is no showing in the instant petition that the prosecution knowingly used any false testimony. On the contrary, as the original record on appeal demonstrates, McCarty when he took the stand positively testified that "the man" was not petitioner Caddel which point was again made clear on cross-examination. His affidavit included in this petition is not at variance with this testimony (Tr. 3-5).

It is a practice, which has been approved in most jurisdictions, if the ends of justice will thereby be served, to extend immunity to one jointly charged with crime, upon condition that he testify fully and

fairly as to his knowledge of the facts out of which the charge arose. No showing was made in the petition for writ of error *coram nobis* or in the petition before this court that such was not done.

It is thus apparent that the state court was correct in finding that if the facts alleged by the petitioner had been presented to the trial court a different judgment would *not* have resulted and therefore, *coram nobis* would not lie.

The decision in *Krulewitch* v. *United States,* 93 L. Ed. 623, 336 U. S. 440, is not in point, for that case merely holds that extra-judicial declarations of a co-conspirator were not admissible when made after the conspiracy was over.

With relation to petitioners' further contention that because McCarty was retained as a defendant and the action against him not dismissed prior to trial, petitioner Caddel was forced to accept a jury unsatisfactory to him, this point is without merit and clearly under the present facts not a ground for *coram nobis.*

The record of the original appeal discloses that at the time counsel for McCarty exercised the challenge complained of, petitioner Caddel had merely passed the challenge. Petitioner did not use any of his individual challenges until later and then participated in the *voir dire* examination of several prospective jurors as well as excusing three other jurors. Under California law, a defendant in a criminal case has no vested right to have certain specified jurors sit in the

trial of his case. Where, as here, it appears that the case was tried by 12 competent, fair, and qualified jurors and that the petitioner Caddel did not exhaust his peremptory challenges, he is in no position to complain (*People* v. *Patterson,* 58 Cal. App. 2d 837, 138 Pac. 2d 341; *People* v. *Harris,* 45 Cal. App. 547, 188 Pac. 65). Moreover, this point was considered by the District Court of Appeal in its decision on the appeal from the original judgment and held not to be prejudicial error (*People* v. *Griffin,* 98 Cal. App. 2d 1, 52, 54).

It thus appears that the facts as purported to be set forth in the petition for writ of error *coram nobis* did not establish errors of fact existing at the time of the trial, unknown to the trial court through no fault of the petitioner, which had they been known would have resulted in a different judgment or would have prevented the rendition of the challenged judgment. The state court found that upon a review of the record the petitioner was fairly tried and under the evidence justly convicted (*People* v. *Griffin,* 1, 57; 219 P. 2d 519). The California Supreme Court did not grant a hearing after this decision; therefore, this judgment became final. The District Court of Appeal in considering the application for *coram nobis* considered the record of the original appeal as well as the petition for writ of error *coram nobis* and reached the same conclusion. Petitioner did not establish that the decisions of other state courts were in conflict with the decision in the instant matter nor

that important questions of law were improperly decided.

It thus appears that where, as here, the petitioner has had other and adequate remedies, he had the adequate protection meant to be afforded to those accused of crime by both the State and the Federal Constitutions. Respondent submits that the state court was correct in denying the petition for writ of error *coram nobis* and the California Supreme Court in denying a hearing thereon as the writ of error *coram nobis* under California law serves a limited purpose and was not available under the factual situation presented here (*Hysler* v. *Florida*, 315 U. S. 411, 62 S. Ct. 688, 86 L. Ed. 932).

CONCLUSION

Upon the record and for the reasons stated respondent believes that the petitioner herein has not stated a federal question of substantial importance warranting this court in issuing the writ prayed for, nor has petitioner sought to review a final judgment of the highest state court. The petitioner received a very fair and impartial trial, the matter was thoroughly considered by the state courts on appeal and the petition for writ of error *coram nobis* did not present facts bringing said matter within the limited scope of the writ under California law. An examination of the entire record in the state courts demonstrates that the determination of the triers of fact was not so lacking in evidentiary support that to give it effect would work that fundamental unfairness which is at war with due

process (*Lisenba* v. *California,* 314 U. S. 219, 86 L. Ed. 166).

It is therefore, respectfully submitted that the petition for writ of certiorari in the instant matter should be denied as the final judgment of the highest state court was not sought to be reviewed, no substantial federal questions were presented, petitioner did not comply with the rules of the Supreme Court, the action of the state court was based on adequate state grounds, and the petition for writ of error *coram nobis* did not present grounds for its issuance under the laws of the State of California and therefore was properly denied.

Respectfully submitted,

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